

AMENDMENT UNDER 37 C.F.R. § 1.116
Appln. No. 09/674,643
Docket No. Q61622

REMARKS

Claims 1-3 and 15-36 are all the claims pending in the application. Claims 1 and 15 are independent claims.

As an initial matter, claim 1 has been amended to correct a typographical error.

Allowable Subject Matter

Applicant thanks the Examiner for indicating that claims 15-22 are allowed.

Claim Rejections Under 35 U.S.C. § 102

Claims 1-3, and 23-36 are rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Nestell (US 5,925,020). Applicants respectfully traverse this rejection at least because Nestell does not teach or suggest all of the claim recitations.

Claim 1

For example, with respect to independent claim 1, Nestell does not teach or suggest the claimed device for protecting a needle having *inter alia* a first link able to take at least three positions when the needle is positioned vertically upright with the sharp end of the needle above the base end of the needle, the three positions being an equilibrium starting position, an equilibrium in use position, and a locked position; and a first resilient return hinge means for connecting the first end of the first link to the sleeve, the resiliency of said first hinge means allowing said first link to takes up one of the equilibrium in use position and the equilibrium starting position, wherein the link makes an acute angle (α) with respect to the axis of the through bore, when no force is applied to the link, and the needle is positioned vertically upright with the sharp end of the needle above the base end of the needle.

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In order to better explain Applicant's position to the Examiner, Applicant has attached hand drafted Figures A and B, which show some of the distinctions between the claimed invention (DRD) and the disclosure of Nestell.

Nestell discloses a needle point barrier having a link arm 38 and a hinge 46 that connects the link 38 to barrier arm 44. In addition, a hinge 40 connects the link arm 38 to a spring arm 32. The proximal end 34 of spring arm 32 is joined to a needle hub 18. Nestell at Figs. 1-5.

As an initial matter, Nestell's hinge 46 cannot correspond to the "first hinge means" of claim 1 because when no force is applied to the link 32, the link 32 assumes either the position shown in Fig. 1 or the position shown in Fig. 5. However, in the position shown in Fig. 1, the link 32 does not make *an acute angle with respect to the axis of the through bore*. It is respectfully noted that claim 1 requires that the equilibrium in-use position and the equilibrium starting position, are both positions wherein the link makes an acute angle (α) with respect to the axis of the through bore. See, for example, the equilibrium-in use position shown in Fig. A.

In addition claim 1 requires that the first resilient return hinge means connects the first end of the first link to the sleeve. Therefore, Nestell's hinge 46 cannot correspond to the claimed "first link" because Nestell's link arm 38 is not connected to the tip guard 50 by the hinge 46, but is instead connected to the barrier arm 44 by the hinge 46.

This structure, in which Nestell's needle point barrier includes two links 44 and 38, instead of the first link, provides Nestell's needle point barrier with a more complicated structure than the claimed device. Furthermore, this structure means creates a twisting force when two links 44 and 38 pass from the position of Fig. 1 to the position of Fig. 5. Therefore, there is a

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risk that the needle 12 will twist or break if the needle is very thin, causing a danger to any health care worker who handles the needle. In contrast, the claimed device does not have this drawback.

Furthermore, the proximal end 34 of Nestell's spring arm 32 cannot correspond to the "first hinge means" of claim 1 because the proximal end is situated between the spring arm 32 (crank arm) and the needle hub 30 (base).

Finally, claim 1 also requires that the first link is able to take at least three positions, an equilibrium starting position, an equilibrium in use position, and a locked position. However, the link arm 38 of Nestell's needle point barrier merely takes two equilibrium positions, the position shown in Fig. 1 and the position shown in Fig. 5, but does not take a locked position. Specifically, the embodiment of Figs. 1-5 of Nestell has a non-locking tip in which it is impossible to know if the needle has or has not been utilized. Therefore the needle is always dangerous to the ill patient.

Although Figs. 6 and 7 appear to show an alternative embodiment in which the equilibrium position shown in Fig. 5 is a locked position, this is not an additional position, but is the same position as one of the two equilibrium positions. Because the needle point barrier of Nestell does not have a third "locked position", the sharp end of the needle is *never protected*.

As such, Applicants respectfully request the Examiner to withdraw the rejection of independent claim 1.

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Claim 3

Applicants respectfully request the Examiner to withdraw the rejection of dependent claim 3 at least because of its dependency from claim 1 and because Nestell does not teach or suggest the claimed device having a second link; a second resilient return hinge means, and a second crank arm. The use of two crank arms allows a health care worker to apply one finger on each of the crank arms when adjusting the device.

There is also no suggestion to modify Nestell so that it has a second link; a second resilient return hinge means, and a second crank arm because the link 38 crosses the needle 12. It would be impossible to have two links 38 each having a slot 42.

Claims 2, 23, 28-20, and 36

Applicants respectfully request the Examiner to withdraw the rejection of dependent claims 2,23, 28-20, and 36 at least because of their dependency from independent claim 1.

Claims 2, and 23-36

In addition, Applicants respectfully request the Examiner to withdraw the rejection of dependent claims 26, 27, and 31-35 at least because of their dependency from independent claim 1 and from dependent claim 3.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

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The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


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